

opinion
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Oct. 19

CONCORD, N.H.

Honorable Gardner C. Turner
Chairman, Board of Trustees
State Industrial School
Keene, New Hampshire

Dear Mr. Turner:

You have inquired what would be the proper method of removal of the Superintendent of the Industrial School, should such removal appear desirable.

Originally, it was provided by section 8 of chapter 463 of the Revised Laws of 1942 that the Trustees shall from time to time appoint a superintendent and may remove him at pleasure. However, in 1947 the Legislature enacted a section entitled "Removal for Cause" which in effect granted tenure to the superintendent of a state institution whose tenure of office is indeterminate. Section 43 of chapter 27 of the Revised Laws, as inserted by chapter 231 of the Laws of 1947. The new section enumerated causes for discharge or removal and vested the complete authority to take such action in the Governor and Council upon petition of the Attorney General or of the Board of Trustees of the institution concerned. Although we in New Hampshire do not favor repeal by implication, the inconsistency between the early law and the new law necessarily requires the interpretation that section 43 repealed the removal provisions of section 8 of chapter 463. While the Reorganization Act amended section 43 so as to limit its provisions to instances which were "not otherwise specifically" covered, such modification did not reactivate the earlier provisions of the law which had permitted removal by the Board at pleasure. Reorganization Act of 1950, section 7.

It is my conclusion therefore that the proper course to follow in the event that removal appears desirable is for

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the Board of Trustees to conduct a thorough investigation of all the facts to determine whether or not discharge or removal is warranted upon the grounds of malfeasance, misfeasance, inefficiency in office or the incapacity or unfitness to perform duties, or for the good of the institution. If, after such investigation it appears that further steps will be necessary, the procedure would be to petition the Governor and Council, as provided.

Please call on this office if we can be of any further assistance.

Very truly yours,

Gordon H. Tiffany
Attorney General

GHT/d